IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 49 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

COMMISSIONER OF WEALTH TAX

Versus

H H VIJAYKUVERBA

---

Appearance:

MR AKIL QURESHI for MR MANISH R BHATT for Applicant

MR JP SHAH for Respondent

---

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 05/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

#. Income-tax Appellate Tribunal, Ahmedabad Bench, "A" has referred the following two questions at the instance of the Commissioner of Wealth-tax, under Section 27 of the Wealth-tax Act, 1957 (hereinafter to be referred to as "the Act").

"1. Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that the value of the New Palace at Morvi could not be included in the net wealth of the assessee?

2. If answer to the question No.1 is in the negative, whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee would be entitled to claim exemption under section 5 (1)(iii) of the Wealth-tax Act, 1957 in respect of the New Palace at Morvi?"

#. The Assessment Years are 1975-76, 1976-77 and 1977-78 and the relevant valuation dates are 31st March, 1975, 31st March, 1976 and 31st March, 1977 respectively. The assessee is the executor of the estate of Late Shri Mahendrasinhji, the Ruler of Morvi. She filed return of wealth and in part IV pointed out that the New Palace at Morbi was exempt under Section 5 (1)(iii) of the Act. The Wealth-tax Officer accepted the assessee's claim. Commissioner of Wealth-tax initiated proceedings under Section 25(2) of the Act and held that the order of the Wealth-tax Officer was erroneous and prejudicial to the interests of the Revenue because the value of the New Palace palace at Morbi was included in the estate of Late Shri Mahendrasinhji, which remained to be administered on the valuation date; that Shri Mahendrasinhji had ceased to be the Ruler; that the assessee - H.H. Vijaykunvarba was the legal owner of the estate of which the palace formed a part, and as she was not the Ruler in occupation of the palace, the value of the palace was erroneously excluded from the net wealth. Similar orders were passed by the Commissioner for all the three years under consideration.

#. The assessee went in appeal before the Tribunal and the Tribunal, for the reasons recorded in its order held that the Commissioner of Wealth-tax was not justified in passing the revisional order under Section 25(2) of the Act, because firstly, there was no question of including the value of the New Palace at Morbi in the net wealth of the assessee, and secondly, even if the New Palace was treated as an asset of the assessee, the assessee will be entitled to claim exemption under Section 5 (1)(iii) of

the Act.

#. We have heard Shri Akil Qureshi, learned counsel appearing for the applicant-Revenue and Mr. J.P. Shah, learned counsel appearing for the assessee.

#. Mr. Qureshi placed reliance upon Section 211 of the Indian Succession Act to contend that the executor was only a legal representative of the deceased and all the properties of the deceased vested in the executor. It was, therefore, contended that the assessee was the owner of the property till the estate was completely administered, and as she was not the Ruler, provisions of Section 5 (1)(iii) of the Act or the exemption by virtue of the notification under Part - B States (Taxation Concessions) Order, 1950 would not be available to the assessee. Mr. Qureshi also placed reliance upon the provisions of Section 19(A) with special reference to sub-sections (1) and (2) of the said Section to contend that till the administration of the estate is complete, the executor is liable under the wealth-tax and is to be assessed in the status of an individual as owner of the property left behind by the deceased. He, therefore, urged that the Tribunal had committed an error of law in holding that the assessee was not liable to show the value of the New Palace in the wealth-tax return filed on behalf of the assessee.

5.1 As against this, Mr. J.P. Shah, learned counsel appearing on behalf of the assessee reiterated the contentions raised on behalf of the assessee before the Tribunal.

#. The Tribunal has reproduced the provisions of Section 2(p) of the Act, which defines the "Ruler" for the purpose of the Act, Section 5 (1)(iii) of the Act which deals with the exemption in relation to a building in occupation of the Ruler, Article 366(22) of the Constitution of India which defines "Ruler" and Notification No. SRO -1619 dated 14th May, 1954, issued under Part B States (Taxation Concession) Order, 1950. From the relevant abstract of the notification, it is apparent that the New Palace at Morbi was in the occupation of the Ruler of Morbi and was recognized as official residence of the Ruler. Section 2 (m) of the Act defines "net wealth". As per the said definition, all the assets belonging to the assessee on the valuation date are required to be included in the net wealth. Therefore, the question is whether it can be stated in the light of the aforesaid Article of the Constitution and the notification, whether the property in question

could be said to be belonging to the assessee. Once by virtue of the notification issued by the Government of India recognizing the New Palace as official residence of the Ruler, it is not possible to state that the property in question belongs to the assessee. The assessee was merely an executrix of the estate of the deceased Mahendrasinhji and as per the will of Late Mahendrasinhji, the property in question devolved on the legatee Shri Mayurdhwajsinhji immediately upon his death. There is no dispute as to the fact that Shri Mayurdhwajsinhji was the Ruler and it was he who was in occupation of the property in question. In view of this position, even if we accept the stand of the Revenue that the executrix should be treated as owner of the property till the point of time administration of the estate is complete, on facts, it is apparent that so far as this property is concerned, bequest was complete and there was nothing left to be administered. If this is the position on facts, we do not find any infirmity with the reasoning and the findings of the Tribunal that the assessee was not required to show the property in Part IV of the return as in fact the property in question no longer remained in the estate.

#. Sub-section (6) of Section 19(A) of the Act provides that if on any valuation date, any asset of the estate has been allotted or applied for the benefit of any legatee, prior to the valuation date, the said asset shall have to be excluded from the net wealth and such asset to the extent, has been held by the legatee would be includible in the net wealth of such legatee, if other requirements under the Act stand fulfilled. In the present case, even going by the provision of Section 19(A), as contended by Mr. Qureshi, by virtue of sub-section (6) of the said Section, the property in question shall not be includible in the net wealth of the assessee.

#. Before parting, we may observe that the Tribunal in its order states as under.

> "However, we are quite clear in our mind that this litigation could have been avoided if the Commissioner of Wealth tax had appreciated the assessee's case that in the first instant she should not have shown the New Palace in part -IV of the return as the same belonged to Mayurdhwajsinhji, who was the Ruler of Morvi on the relevant valuation dates."

At the time of hearing of the Reference Application, on

behalf of the assessee, it was contended that the Tribunal had given its decision on appreciation of facts which were not disputed by the Revenue and hence, it was not necessary to make any Reference. However, inspite of the aforesaid finding recorded in its appellate order, the Tribunal has made this Reference. Atleast, the Tribunal should have avoided the litigation about which it has expressed anguish in relation to the order of the Commissioner of Wealth-tax.

#. We therefore hold that the Tribunal was justified in holding that the value of the New Palace at Morbi could not be included in the net wealth of the assessee. Question no. 1 referred to us is, therefore, answered in the affirmative i.e. in favour of the assessee and against the Revenue. In light of answer to question no.1, it is not necessary to deal with and answer question no.2 and hence, we decline to answer the same. The Reference stands disposed off accordingly with no order as to costs.

[B.C. PATEL, J.] [D.A. MEHTA, J.]

*****

pirzada/-